

Original Article

COMPULSORY TREATMENT FOR VICTIMS OF GUNSHOT ACT (2017): SAVING LIVES IN NIGERIAN HOSPITALS OR A CONTRADICTION OF THE PROVISIONS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (2015)?

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ABSTRACT

BACKGROUND: Gunshot wound and the problems associated with it has always been a global health phenomenon. Due to the sensitive nature of gunshot injuries in any clime, the treatment of victims is a pertinent and constant controversy among stakeholders particularly victims and their family, Governments, Medical Practitioners, Police, “Good Samaritans”, Legal Practitioners and relevant scholars. Prior to December 2017, victims of gunshot wounds could not be treated in Nigerian Hospitals without a police report which has led to the death of hundreds of thousands of victims in Nigeria. In 2017, the Nigerian President, Muhammadu Buhari signed the Compulsory Treatment and Care for Victims of Gunshot Act (2017) into law and being a legislation enacted by the National Assembly, is binding on all States in the Federation.

METHODOLOGY: This Paper explores the provisions of this new Act and the responses of both the Public and Private hospitals in treating victims of gunshot wounds without a police report. Furthermore, the study interrogates whether the Act negates the provisions of the Administration of Criminal Justice Act (2015), or it was enacted to protect the lives of gunshot wound victims thereby, ensuring the protection of the fundamental right to life. It is recommended that both the general hospitals and the private ones are to abide strictly by the provisions of the newly enacted Act so as not to commit any of the various offences specified in the Act.

CONCLUSION: It is concluded that on issues relating to care of gunshot and firearms victims in Nigerian, Medicine, Law and the Criminal Justice System must inter-relate in order to enforce the Provisions of the 1999 Nigerian Constitution that stipulates the protection of human lives.

KEYWORDS: Gunshot wounds, Medical Personnel, Police, Law, Hospitals.

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INTRODUCTION

The prevalence of gunshot wounds is detected to be on the rise all over the world.¹ In developed and developing states, gang related violence and suicide attempts are outlined as the main motives behind such injuries.² Until recently in Nigeria, gunshot wounds were strictly linked to military activities as in the civil war of 1967-1970³, or the few accidents that occur during celebrations or festivals.^{4,5} Presently, it is worrisome to note that gunshot injuries have now become an everyday occurrence in Nigeria.^{6,7}

The causes of gunshot injuries in Nigeria are totally different. Reports in Nigeria have depicted that religious violence is a common cause⁸ of gunshot wounds in the Northern Nigeria part of

Nigeria⁹ while in the Southern Nigeria; armed robbery related gunshot injuries are very common.¹⁰ The other sources of gunshot injuries occur from accidental killings¹¹, wars, assassinations¹², political thuggery¹³, parties and festivals¹⁴ that turn rowdy, extra judicial Killings¹⁵, hunting experiences¹⁶, cultism¹⁷, communal clashes¹⁸ and the current incessant herdsmen killings in Nigeria.

Across the globe, most of the states that experience gunshot violence are those that are ravaged by terrorism, war, communal killings and disputes. As a result, there will be an increase rate of firearm wounds, both for the military and for the ordinary citizens. Furthermore, the weapon used by the military are usually different from the ones found in civilian areas. High-velocity injury is prevalent in war times, while low velocity wounds from handguns is constant when there is no war.¹⁹

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Medically, the attention given to gunshot wounds is resource-intensive and afflicted by complications.²⁰ If the clinical shape of the patients is grave and serious, the curative procedure is to be used according to the principles of damage control surgery (DCS) which is a concept that was developed for the treatment of gunshot and blast injuries in the military context and can be prescribed for the treatment of civilian victims.²¹ In order to minimize further (systemic) strain on the physiology of the critically injured victim of gunshot, the damage control surgery is adopted in order to exclusively ensure the survival and preserve the body function.²² There may be a deviation from the pattern of individual medical care in situations of a mass injury event, a gun rampage, or a terror attack.²³ In Nigeria, we have general occurrences like Fulani herdsmen killings, terrorism, communal clashes, unlawful assembly and riot, which may result in several victims of gunshot injuries. When situations like this happen, there is no particular or same treatment recommended as regards sense of standards or guidelines for the pre-hospital or hospital care of gunshot injuries and there could be scarcity of services to be rendered, e.g., undersupply of personnel and necessities or technical problems which may result in limitation of treatment procedures when ensuring the chances of victim's survival.²⁴ All the personnel in the paradigm of rescue and treatment are to be versed in expert understanding of "typical injury patterns" and care priorities after gunshot, from first aid to primary-care hospital.²⁵

Legally, in Nigeria right from independence till about 2014 [26], it was believed that there is a law that provides that no gunshot victim for whatsoever reason should be treated by any health care institution without a valid police report. This made both private and public hospitals to abide strictly by this "law" to the extent that any slightest contravention among the medical personnel would land them in an entangled case with the Police. As a result of this "law", Nigerians in their thousands have lost their lives due to the refusal of medical institutions to treat gunshot victims except upon the submission of a valid police report. Looking back at the police stance and rigidity on this so called "law", the rationale was to lift the veil of protection any criminal who has been shot may wear when he sought for treatment in hospitals. A category of

persons that may be constrained to get professional medical treatment are criminals.²⁷ A study opined that "many criminals are shot, perhaps hundreds of thousands per year or twice the estimated number of people killed or treated" for gunshot injuries in healthcare institutions.²⁸ This assertion further proves that for fear of being reported to the police, most criminals may not go to hospitals for care when they are shot.

The author is still baffled at the kind of "law" that was so vindictive to the extent of ensuring not the safety of a criminal but his arrest. Let us bear in mind that under the Nigerian Criminal Justice Administration, an accused is presumed innocent until proven guilty by the Law court. What kind of "law" indirectly turned Nigerian hospitals to a law court and "an abode of death" by ensuring that a gunshot victim presents a valid police report before he can be treated? Everyone knows that there is only a milli-fraction between life and death especially in cases of emergency that requires immediate medical attention. Who then has the time to first of all go to the police station to secure a police report before rushing to the hospital when trying to save a gunshot victim from dying? The so called "law" further presumed every victim of gunshot in Nigeria to be an accused person. The priority of every state is to protect the lives of every citizen in the paradigm of its legal system including the Criminal Justice Administration.

It is rather unfortunate after several decades to know that the "law" that makes it a necessity for gunshot victims to present a valid police report before they can be given any medical attention in Nigeria was a mere police ethic and rule and never a law or legislation. How Pathetic! Considering the thousands of lives that have been lost from gunshot injuries. This "law" was an absolute deprivation of the right to life as enshrined in the 1999 Constitution which states that "every person has a right to life and no one shall be intentionally deprived of his life. Save in execution of a sentence of a court in respect of a criminal offence in which the person has been found guilty in Nigeria".²⁹

From the foregoing, the study therefore explores the current and realistic legal framework on treatment of victims of gunshot injuries in Nigeria and whether in the paradigm of these laws, they

are in contradictions with the provision of the Criminal Justice Administration Act (2015).

METHODOLOGY

This study adopted both the doctrinal and empirical methodology. The doctrinal approach made use of a combination of rules, regulations, principles, ethics, norms and values in both the criminal and medical law so as to rationalize the emerging parameters of the Compulsory Treatment and Care for Victims of Gunshot Act (2017), the relevant sections of the National Health Act (2014) and the provisions of the Administration of Criminal Justice Act (2015).

The empirical methodology adopted the semi-structured interview of medical personnel from the private and public health provider institution so as to know their responses and professional ethics on the newly enacted Compulsory Treatment and Care for Victims of Gunshot Act (2017). The semi-structured interviewed also determined the level of compliance of the Police wherein some officers in the relevant Force department were interrogated.

Relevant scholarly journal articles and textbooks were also employed.

The Situation in Nigeria Prior to December 2017

Before 2014 in Nigeria, victims of gunshot injuries were not allowed to be treated by both public and private hospitals without a police report. The psychological rationale behind the insistence on the request of a police report is to ensure that the victim of the gunshot injury is not a run-away criminal (thief, burglar, robber, kidnapper, rapist, arsonist etc) who has just been shot by private individuals or the police and evading an arrest. The lawmakers, hospital managements and the police have totally forgotten that most victims of gunshots are not criminals as believed but rather, they are innocent citizens that were shot by criminals.

By 2014, then Minister of Health Professor Onyebuchi Chukwu in a media chat with journalists said there is cooperation between the Federal Ministry of Health and the Nigerian Police force to treat Victims of gunshots thereby saving Lives.³⁰ On no account should policy makers equate a mere awareness on an issue to an enacted law. What stopped the National Assembly from passing the Compulsory

Treatment and Care for Victims of Gunshot Bill that has been placed before them since 2009 into law? Why did the lawmakers use 8 years to pass such an urgent bill that would have saved thousands of lives and also ensure the fundamental right to life as enshrined in the 1999 Constitution? It was not surprising that despite the awareness being put in place, most hospitals continue to envisage restraints in the treatment of victims because it was not a law.

Later in December 2014, President Goodluck Jonathan signed the National Health Act into law.³¹ The new legislation as at then made provisions for treatment of clients in cases of emergencies and it states that "A health care provider, health worker or health establishment shall not refuse a person emergency medical treatment for any reason".³²

From the foregoing, it is obvious that the provisions of the law were not elaborate enough since it did not specify situations that can be regarded as emergency. This however made Health care providers and institutions not to include gunshot injuries as an emergency to be treated in practice so as to avoid police matters. Although under the same Act, it is an offence for anyone not to treat in cases of emergency and "is liable on conviction to a fine of N100, 000.00 or to imprisonment for a period not exceeding six months or to both".³³

From 2015, there had been a very high increase in the rate of gunshot wounds due to so many criminal and lawless activities like terrorism, communal clashes, armed robbery and militancy across the country.³⁴ Too many innocent persons were daily losing their lives from these criminal occurrences after being shot and rushed to hospitals but were never treated without police reports. The government, the lawmakers, the public and even the hospital managements and every other stakeholder knew that something drastic was to be done to save lives. The situation was so worrisome that victims of road accidents also needed police reports before they could be treated in hospitals. The entire situation was such a pathetic before the police intervened in 2015.

The Inspector General of Police a media release through the then former spokesman of the Force, Mr Emmanuel Ojukwu, urged medical doctors to

treat victim gunshot injuries, but must compulsorily file reports with the police. He further that added hospitals must not harass family members and good Samaritans who bring in the victims for treatment but are to be welcomed so as to allow the police to carry out a thorough investigation so as to know the cause of the gunshot. He further aligned with the position of the Minister of Health by stressing that medical personnel have “professional and sacred call to save lives”.³⁵

On 3rd of May 2016, the federal government through the Minister of Health Professor Isaac Adewole issued a directive to all health care providers in Nigeria to treat all victims of gunshot injuries without any hindrance especially requesting for a police report and he further said had this to say “Hospitals are sanctuary for the sick and injured, never must our hospitals be closed for whatever reasons; even in war time situations, hospital must remain open. Doctors must show no restraint in treating emergencies, even with gun-shot wounds you must treat them, thereafter raise questions. You must also treat emergencies before asking for money because life is more precious than money”.³⁶

Were the medical personnel to be blamed for rejecting to treat victims of gunshot wounds? Medical Personnel were only following and obeying laid down rules and regulations as handed down to them by the police, therefore they were not to be blamed. In fact, many medical personnel have found themselves unnecessarily entangled in police matters whenever they decided to be “good Samaritans” and treated victims of gunshot wounds without police reports.³⁷ So, they would rather reject to treat people involved in such emergency situations. The police authorities' effort to change this ethic of their profession that prevents medical personnel from treating victims of gunshot wounds has come so late but still highly commendable. Eventually it was obvious from all happenings that there was an urgent necessity for the enactment of the Compulsory Treatment and Care for Victims of Gunshot Act (2017).

Some Case Scenarios before 2017

1. On September 20, 2009, Mr. Ogunbayo Ohu, who was an Assistant News Editor of a publishing company was shot severally one morning in his

house in Egbeda, Lagos, by persons suspected to be hired assassins, his neighbours believed he would have survived the gunshots if the closest hospital he was rushed to had agreed to treat him. But, as it was the norm in many Nigerian hospitals then, his neighbours were requested to go to the Police Station to secure a police report before Bayo could be cared for. The neighbours pleaded with the hospital to commence treatment on Bayo who was obviously getting soaked in his own pool of blood, and gasping for breath. Unfortunately, Bayo died on his way to General Hospital in Ikeja where his neighbours was immediately driving him to the when the hospital management refused to treat him.³⁸

2. On 6 January, 2008, a famous chairman of National Union of Road Transport Workers (NURTW), Alhaji Saula Saka was shot repeatedly by four killers at his residence, in Iyana-Ipaja, Lagos. He was rushed to the nearest hospital but his family members watched helplessly as he took his last breath because the hospital management refused to touch his bullet riddled body not to talk of giving him an emergency treatment since there was no police Report.³⁹

Provisions of the Compulsory Treatment and Care for Victims of Gunshots (2017)

The lawmakers took steps in the right direction by emphatically stating that “every hospital in Nigeria whether public or private shall accept or receive for immediate and adequate treatment with or without police clearance any person with a gunshot wounds”.⁴⁰ The very first section of this Act is very commendable since it is not just a duty but also a right for all hospitals in Nigeria be it private or public to attend to victims of gunshot without a police report. At last, medical personnel will no longer be harassed by the police for treating such persons in Nigeria. Also, Any person whether civilian or security agents has a duty to be a good Samaritan and give every possible assistance to any person with gunshot injuries by ensuring that the person is rushed to the nearest hospital for instant medical care [41]. This provision ensures that even a criminal that has been shot by the police must immediately be taken to the hospital for treatment and not taken to the police station to wriggle in pains and

probably die. More so, civilians who act as good Samaritans will no longer be treated like criminals by the police since this law has imposed a duty to assist on everybody.⁴²

Furthermore, the law provides that no hospital in Nigeria must refuse to treat a victim of gunshot injuries for lack of initial financial deposit.⁴³ and that no person including the police or other security agents must make gunshot victims pass through demeaning treatment or infliction of pain.⁴⁴ The hospital that agrees to treat any person with gunshot injuries has a duty "to report the fact to the nearest police station within two (2) hours of commencement of treatment".⁴⁵ The police must instantly effect an investigation into the facts of the case once a report has been made by the hospital.⁴⁶ During investigations, the police may not forcibly discharge a person with bullet wounds from the health care institution "unless and until the Chief Medical Director of the hospital certifies him fit and no longer in dire need of Medicare".⁴⁷ The Act stipulates further that it is the duty of the hospital to notify the family members or relations of the victim with bullet injuries within twenty four hours of becoming aware of the victim's identity.⁴⁸

Offences and Punishment under the Act

The Act created some new offences under the Criminal Justice System and are outlined below; It is an offence for any hospital to give false report to the police, upon conviction shall be liable to a fine of 100, 000.00 naira and every doctor that is directly linked with the care "shall be liable on conviction to 6 months imprisonment or a fine of 100, 000.00 naira or both".⁴⁹ Another crime created under the Act is the deliberate failure or refusal by any person to give the necessary information required by the police⁵⁰ "and shall on conviction, be liable to 1 (one) month imprisonment or a fine of 50,000.00 naira or both."⁵¹ The provisions and tone of the Act became stricter when it provided that; "any person who is guilty of an offence under this Act especially, when the offence does not lead to death of victim but led to substantial physical, mental, emotional and psychological damage, shall be liable on conviction to imprisonment for a term of not more than 15 years and not less than 5 years without the option of fine".⁵²

It is also a criminal act for any person, police officer, other security agents or hospital to stand by or "omits to do his bit which results in the unnecessary death of any person with bullet wounds commits an offence and shall on conviction be liable to 5 years imprisonment a fine of 50,000.00naira or both."⁵³ Every hospital or facility that takes or receive for treatment any person with bullet wounds shall keep adequate record of the treatment. If a registered company commits any offence under the Act, the Head of the Company will be tried "in accordance with the provision of sections 11 and 13 of this Act"⁵⁴. This provision is a welcomed development since it will ensure that a Body Corporate is treated like a legal entity that can sue and be sued. Furthermore, if convicted, the High Court in addition to any other punishment under the Act, shall order a person or corporate body to financially compensate the victim of gunshot injuries with an amount equivalent to the loss sustained by the victim.⁵⁵ The order of restitution is to be enforced by the victim in the same way as a judgment in a civil action.⁵⁶ In terms of Hierarchy of Courts in Nigeria, any case emanating from the provisions of this Act must be instituted at the High Court.⁵⁷ In the appraisal of the provisions of the Compulsory Treatment and Care for Victims of Gunshots Act (2017) are simple and explicit enough to be comprehended by the citizens, medical personnel, Police and other security agents, lawyers and Judges.

Does the Act Negates the Provisions of the Administration of Criminal Justice Act?

Is the Compulsory Treatment and Care for Victims of Gunshots Act (2017) in conflict with some provisions of the Administration of Criminal Justice Act (2015)? Some legal authors have opined that it does.⁵⁸ A critical analysis of the comparison of both Acts does not show any conflict. Firstly, the Administration of Criminal Justice Act (2015) stipulates that once a suspect is arrested, he should immediately be taken to a police station and to be informed of his alleged offence instantly.⁵⁹ This stipulation is absolutely silent on a fleeing suspect with gunshot wounds while the Compulsory Treatment and Care for Victims of Gunshots Act (2017) stipulates the survival of any fleeing criminal and every victim of gunshot wound in Nigeria as a top priority in the paradigm of criminal Justice Administration.⁶⁰

Secondly, the Administration of Criminal Justice Act (2015) provides that an arrested suspect must be allowed access to legal advice to secure his bail or prepare for his defence or release.⁶¹ The Compulsory Treatment and Care for Victims of Gunshots Act (2017), provides that even if a gunshot wound victim is a fleeing suspect, the health care institution can only make a report to the nearest police station within two (2) hours of treatment.⁶² This gives assurance that the medical personnel should perform the primary duty for which they took an oath which is to save the victim's life first before acting as employees in the criminal justice system.

Lastly, another requirement under the Administration of Criminal Justice Act (2015) is that after his arrest, once a suspect gets to the police station, the following record should be put in a prescribed form;

- “(a) The alleged offence;
- (b) The date and circumstances of his arrest;
- (c) His full name, occupation and residential address; and (d) for the purpose of identification:
- (i) His height, (ii) his photograph, (iii) his full fingerprint impressions, or (iv) such other means of his identification”.

⁶³ With these provisions of the law, the police are doing their jobs in such circumstances and it does not mean that the Administration of Criminal Justice Act (2015) negates it. Medical personnel should not be overstressed to do the police job for them. It is enough that the hospital that is treating a victim of gunshot wound is mandatorily authorized by the Act to make a report at the police station of the situation within two(2) hours. An author already asserted that the medical personnel are over-tasked and that if “the State wants information for criminal law purposes; it must get the information on its own, relying on its own resources”.⁶⁴ This is a more advanced and more realistic legislation that protects the right to life and ensures it without conflicting without negating the provisions of any other law, rather, it complements them'

RESULTS

A semi-structured interview was conducted for ten Proprietors of Private health care institution. Only six out of the proprietors are aware of the Compulsory Treatment and Care for Victims of Gunshots Act (2017). When asked what the six do when victims of gunshot injuries are brought in, they said they prefer not to treat them but refer

them to the nearest Government or Teaching health care centers. They claim to do this because they don't want to be caught in police web and secondly, they do not have modern equipment to treat gunshot injuries like public hospitals. The remaining four proprietors said even though they are not aware of the new law, no gunshot victim has been brought in for treatment, but anytime they are, they would prefer to refer them to public hospitals.

A semi-structured interview was also carried out among ten medical personnel from the emergency unit of ten different government owned hospitals. The ten of them said their hospitals are in the know of the Compulsory Treatment and Care for Victims of Gunshots Act (2017). Gunshot victims without a police report, they all answered in the affirmative. When further asked if they went to the nearest police station to make a report, they all said yes and that the police came instantly to investigate the cause of the gunshot injuries. This means all public hospitals are aware of the provisions of the Compulsory Treatment and Care for Victims of Gunshots Act (2017) and they abide by the protocols in the law. The author attempted to conduct a semi-structured interview among ten Divisional Crime Officers (DCOs) of the Police stations that were closest to the ten government owned hospitals, but only two of them agreed to grant the interview. The author guessed the DCOs that refused to grant the interview were “protecting” their jobs. When asked if the two responsive DCOs have the knowledge of the Compulsory Treatment and Care for Victims of Gunshots Act (2017), they both said yes and that the Nigerian Police are strictly abiding by the provisions of the Act and said no more.

RECOMMENDATION

The relevant ministry or department at the Federal, State and Local Government levels are to create an awareness of Compulsory Treatment and Care for Victims of Gunshots (2017) among the citizens through the social media, Newspapers, and radio/ television adverts. Medical personnel are to be sensitized on the importance of this new law through workshops and Seminars. The Social workers are also to be carried along since it is the duty of the personnel in the social work department to get the police and the victim's family informed of the situation.

The provisions of this new Act are to be included in the primary, secondary and tertiary curriculum. This is a strategy to educate students who will in turn orientate their family members on what to do in case they find themselves in a situation where they become victims of gunshot wounds. The police and other security agents are to strictly abide by the provisions of the Compulsory Treatment and Care for Victims of Gunshots Act (2017). The police should stop shooting suspects and committing extra judicial killings all in the name of lawful arrest. The police should also have respect for the medical personal, victim's family members and victims of gunshot injuries and not act towards them as if they are criminals. The National Assembly should also enact contemporary Legislation to regulate guns and other firearms in Nigeria so as to secure the protection of human lives.

CONCLUSION

It is concluded that on issues relating to care of gunshot and firearms victims in Nigerian, Medicine, Law and the Criminal Justice System must inter-relate in order to enforce both the Provisions of the 1999 Nigerian Constitution that stipulates the protection of human lives and the Compulsory Treatment and Care for Victims of Gunshots (2017).

The survival of the victim depends on rapid transportation to the hospital and instant available medical treatment. ! Unfortunately, as a result of the increasing penetration of military assault weapons in the civilian society through the illegal drug trade and "the fact that mass casualty events, like terrorism or shootings, are becoming more commonplace, penetrating trauma especially high energy injuries are likely to increase in the future".⁶⁵

Although the Compulsory Treatment and Care for Victims of Gunshots Act (2017) is somehow belated, Nigerians, the Health care institutions, Legal Practitioners, potential unknown victims, security agents and every other stakeholder are relieved at the enactment of this law.

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